STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 18, 2014
v	No. 312951 Crawford Circuit Court
WAYNE ROBERT FARREN, Defendant-Appellant.	LC No. 12-093344-FC

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

A jury convicted defendant appeals of accosting children for immoral purposes, MCL 750.145a; assault and battery, MCL 750.81; possession of less than 25 grams of cocaine, MCL 333.7403; and attempted second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (person under 13 years old), as a second or subsequent offender, MCL 750.92. The trial court sentenced defendant as a fourth-offense offender, MCL 769.12, to prison terms of five to 15 years for accosting children for immoral purposes, 93 days for assault and battery, two to 15 years for possession of less than 25 grams of cocaine, and 10 to 20 years for attempted second-degree criminal sexual conduct (CSC II). We affirm defendant's convictions, but remand for resentencing.

I. JURISDICTION

Although defendant asserts that he is challenging the circuit court's subject-matter jurisdiction because a probate judge presided over the trial, his argument is properly framed as a constitutional challenge to the circuit court's exercise of jurisdiction. Defendant was not tried in the probate court or some anomalous hybrid court. And the circuit court plainly has jurisdiction to hear and try criminal cases. MCL 600.601; MCL 767.1; *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). Because the arguments he raises were not raised below, our review is for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999). To prevail, defendant must prove that a plain, meaning "clear" or "obvious," error occurred that affected one of his substantial legal rights. *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008).

Defendant first argues that the practice of allowing probate court judges to preside over criminal matters in the circuit court is unconstitutional. Defendant acknowledges that MCL

600.401(1) and (2)(c) permits each judicial circuit to adopt a concurrent jurisdiction plan that allows, in relevant part, the "probate court and 1 or more probate judges [to] exercise the power and jurisdiction of the circuit court." Defendant also concedes that our Supreme Court adopted Crawford County's concurrent jurisdiction plan in Administrative Order 2004-2. But defendant contends that these statutes and the administrative order are void because they violate our state constitution.

Const 1963, art VI, § 1 provides as follows:

> The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Section 151 of the Revised Judicature Act (RJA), MCL 600.101 *et seq.*, mirrors this constitutional provision:

> The judicial power of the state is vested exclusively in 1 court of justice which shall be divided into 1 supreme court, 1 court of appeals, 1 trial court of general jurisdiction known as the circuit court, 1 probate court, and courts of limited jurisdiction created by the legislature. [MCL 600.151.]

Defendant argues that concurrent jurisdiction plans mandate a unified and undivided court system and violate the constitutional requirement that the judicial power of the courts be "divided" into various courts, including the circuit court and the probate court. Plaintiff contends that Const 1963, art VI, § 15, conferred on the Legislature the power to decide the jurisdiction and authority of the probate courts, which includes allowing probate court judges to preside over circuit court matters.

In *People v Fleming*, 185 Mich App 270, 273-275, 460 NW2d 602 (1990), this Court considered whether it was unconstitutional for a judge from a different jurisdiction (the Recorder's Court, which only had jurisdiction to adjudicate criminal offenses that occurred within the City of Detroit) to preside over a criminal case in the Wayne Circuit Court pursuant to an administrative order. This Court noted that: (1) our Supreme Court was authorized to assign "judges to perform judicial duties for limited periods or specific assignments," pursuant to Const 1963, art VI, § 23, and MCL 600.225; and (2) regardless, the particular court adjudicating a matter is not determined by the presiding judge's position, but rather by the seat in which the judge acts. *Id*. at 273-275, 277-278. *Fleming* concluded that the circuit court had jurisdiction over the case because the defendant was actually tried in the circuit court, even though the presiding judge was visiting from the Recorder's Court. *Id*. at 278. See also *Zachrich v Booth Newspapers*, 119 Mich App 72, 73-75; 325 NW2d 630 (1982) (explaining that elected district judges from one circuit may serve in a different circuit without violating the state constitution).

The jurisdiction of a court is only made exclusive if the operative language clearly expresses the intent to make that tribunal's jurisdiction exclusive over the class of cases. See *Papas v Mich Gaming Control Bd*, 257 Mich App 647, 657-662; 669 NW2d 326 (2003).

Defendant is essentially arguing that the word "divided" conferred exclusive jurisdiction on each type of court, such that it would be impossible for any other court of the state to possess concurrent jurisdiction with any other court. This argument is unpersuasive.

Our state's judicial power is "vested exclusively in one court of justice" that is "divided" into various courts. Const 1963, art VI, § 1. The phrase "one court of justice" signifies that our courts are unified and share the same source of judicial power, even if their primary responsibilities may differ. Just because each court has different primary responsibilities, it does not follow that no court may share concurrent jurisdiction with another court over a certain class of proceedings. "Concurrent jurisdiction" occurs where "[j]urisdiction [is] exercised simultaneously *by more than one court* over the same subject matter and within the same territory." Black's Law Dictionary (8th ed) (emphasis added). The probate and circuit courts remain divided even though they can under certain circumstances preside over the same subject matter.

Const 1963, art VI, § 15 makes it clear that our Legislature has the authority to establish the jurisdiction and power of the probate courts. And our Supreme Court has authority to "authorize persons who have been elected and served as judges to perform judicial duties for limited periods or specific assignments." Const 1963, art VI, § 23. These constitutional provisions do not reflect an express intent to confer on each court its exclusive sphere of sovereignty. By adopting AO 2004-02, which was predicated on the authorization of concurrent jurisdiction in MCL 600.401, our Supreme Court authorized the probate court and its judges to exercise the circuit court's authority and preside over those matters.

II. OTHER ACTS EVIDENCE UNDER MCL 768.27A

Defendant next contends that the trial court abused its discretion by admitting into evidence his prior CSC convictions. Plaintiff timely notified defendant of its intent to introduce evidence of defendant's prior plea-based convictions for attempted CSC III (victims between ages of 13 and 15). In 2000, then 26-year-old defendant engaged in sexual intercourse in with a 15-year-old girl and digitally and orally penetrated a 13-year-old girl. The court held that the evidence was admissible under MCL 768.27a without a determination of whether the evidence was substantially more prejudicial than probative. MCL 768.27a states as follows:

> (1) Notwithstanding [MCL 768.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.
>
> (2) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Minor" means an individual less than 18 years of age.

Defendant does not dispute that the evidence falls within the parameters of MCL 768.27a. Rather, he claims that the court abused its discretion by refusing to undertake the required MRE 403 analysis before admitting the evidence and that this error warrants remand for an evidentiary hearing.

In *People v Watkins*, 491 Mich 450, 481; 818 NW2d 296 (2012), quoting MRE 403, our Supreme Court held that evidence of prior acts of sexual offenses against minors is admissible under MCL 768.27a as propensity evidence unless "'its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" In determining whether the probative value of the evidence is substantially outweighed by prejudice, the court should weigh and consider "(1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony." *Id*. at 487-488.[1]

The "proponent of evidence bears the burden of establishing relevance and admissibility." *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). Evidence offered pursuant to 768.27a is presumed relevant. *People v Pattison*, 276 Mich App 613, 620-621; 741 NW2d 558 (2007). Before a court is required to engage in the fact-finding analysis under MRE 403, defendants are required to overcome this presumption by establishing the irrelevance or overwhelming prejudice of this evidence. *Watkins*, 491 Mich at 486-487. Defendant failed to do so. Although the instant victim is of the opposite gender than the prior victims, all the victims were minors near the same age. Further, defendant's prior CSC convictions involve the same class of conduct as his alleged conduct in the instant case. Defendant's past and present sexual offenses against minors also occurred at times when defendant was intoxicated. Accordingly, because defendant failed to rebut the presumption of admissibility, MRE 403 balancing was not required.

III. JUROR QUESTIONS

Defendant next argues that the court violated defendant's constitutional rights by allowing jurors to submit questions to witnesses during trial. Here, defendant's counsel agreed that the court's jury instructions were sufficient, and those instructions informed the jury that they had the right to ask questions of the witnesses. Thus, defendant affirmatively waived any error. *People v Loper*, 299 Mich App 451, 471-472; 830 NW2d 836 (2013).

[1] This list is instructive, not exhaustive. *Watkins*, 491 Mich at 488.

IV. EVIDENTIARY RELEVANCE

Defendant claims that the trial court erred in preventing him from asking the victim's brother during cross-examination about the identity of the person who purchased the cocaine that was being used on the premises at the time of the incident. We disagree. The court's decision to admit or exclude evidence during a trial is reviewed for an abuse of discretion, which occurs when the decision is outside the range of principled outcomes. *People v Malone*, 287 Mich App 648, 661; 792 NW2d 7 (2010). Legal error necessarily constitutes an abuse of discretion. *Gentris v State Farm Mut Auto Ins Co*, 297 Mich App 354, 364; 824 NW2d 609 (2012). "Whether a defendant's right to present a defense was violated by the exclusion of evidence is a constitutional question that this Court reviews de novo." *People v Mesik* (*On Reconsideration*), 285 Mich App 535, 537-538; 775 NW2d 857 (2009).

During trial, the victim's brother stated, "We were doing what I thought was to be cocaine, I guess." The court intervened during questioning when defense counsel asked the victim's brother whether he purchased the cocaine. The court appeared concerned about the victim potentially incriminating himself, particularly after plaintiff could not guarantee that the witness would be given immunity from potential criminal prosecution if he admitted to buying cocaine. Defendant contended that the evidence was relevant because it would establish how the cocaine came to be in the home, which could explain how it came to be planted on defendant's person. The court instructed the victim's brother that he had to testify regarding who used and possessed the cocaine because plaintiff offered immunity for those potential charges. However, because plaintiff could not give the victim's brother immunity for buying drugs, the court informed him of his right against self-incrimination. The court also prohibited plaintiff from insinuating in any way that defendant brought the cocaine to the residence because defendant would not be able to attack such an insinuation without referencing the buyer of the drugs. Subsequently, the victim's brother testified that defendant did not bring the cocaine to the residence. The victim's brother further claimed that he did not witness defendant use cocaine or any other drug at that time.

Under our federal and state constitutions, due process requires "that criminal defendants be afforded a meaningful opportunity to present a complete defense." *People v Aspy*, 292 Mich App 36, 49; 808 NW2d 569 (2011). Our Supreme Court recognized that the weight of evidence supporting a defendant's defense must be decided by the jury. *People v Likine*, 492 Mich 367, 407; 823 NW2d 50 (2012). However, the due process right to present a defense is not absolute. *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984). The defendant must comply with all established rules of evidence and procedure that are "designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id*. (internal quotation marks and citation omitted). And the defendant may only submit evidence in support of a defense it the evidence is both relevant and admissible. *People v Hackett*, 421 Mich 338, 354; 365 NW2d 120 (1984).

The trial court's prohibition against defense counsel asking the victim's brother about who bought the cocaine did not deprive defendant of his right to present a complete defense. The evidence sought has no tendency to make more or less probable the issue of whether someone at the party planted the cocaine on defendant. As the trial court correctly noted, the victim's brother indicated that "we," meaning more than one person, used cocaine at the

residence. Thus, anyone at the residence who had access to the drugs could have planted the drugs on defendant.

V. SENTENCING

Defendant contends that the trial court committed error warranting reversal when it sentenced him to 10 to 20 years incarceration for his conviction for attempted CSC II. The standard of review for sentencing decisions was set forth in *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003):

> [T]he existence or nonexistence of a particular factor is a factual determination for the sentencing court to determine, and should therefore be reviewed by an appellate court for clear error. The determination that a particular factor is objective and verifiable should be reviewed by the appellate court as a matter of law. A trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence shall be reviewed for abuse of discretion. [Internal quotations marks and citation omitted.]

MCL 750.520f establishes a five-year mandatory minimum sentence for multiple sexual offense convictions:

> (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.
>
> (2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b [CSC 1st degree], 520c [CSC 2nd degree], or 520d [CSC 3rd degree] or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.

In sentencing defendant on attempted CSC II, the court implicitly found that MCL750.520f(1) applied because it indicated that the recommended prison sentence was 5 to 20 years. Plaintiff concedes, and we agree, that the court erred in applying this enhancement provision because the statute only applies to completed CSCs, not attempted CSCs.

Defendant next contends that the lower court erred in failing to justify the significant extent of its departure from the guidelines. A trial court must articulate substantial and compelling reasons on the record when departing from the guidelines if the court believes the sentencing range is "[dis]proportionate to the seriousness of the defendant's conduct and to the defendant in light of his criminal record." *Babcock*, 469 Mich at 262; see also MCL 769.34(3). When deviating from the sentencing guidelines, the trial court must articulate substantial and compelling reasons for doing so that are objective and verifiable, keenly attract the court's attention, and of considerable worth in deciding the terms of the sentence. *Babcock*, 469 Mich at

257. Substantial and compelling reasons justifying a departure "exist only in exceptional cases." *Id*. (internal quotation marks and citation omitted). The court cannot base its departure on matters adequately contemplated in the scoring variables. MCL 769.34(3)(b); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003).

The lower court indicated that it was departing from the guidelines because they did not adequately account for defendant's pattern of committing sexual offenses against minors. However, the court did not explain why the extent of its departure was appropriate, and we cannot determine whether the trial court would have sentenced defendant as it did if it had not erroneously relied on MCL750.520f(1). Accordingly, we remand for resentencing.

Defendant finally contends that the lower court erred by engaging in judicial fact-finding, in violation of the United States Supreme Court's recent opinion in *Alleyne v United States*, 570 US ___, ___; 133 S Ct 2151; 186 L Ed 2d 314 (2013). This argument was rejected in *People v Herron*, ___ Mich App ___; ___ NW2d ___ (Docket No. 309320, issued December 12, 2013), slip op p 7:

> We hold that judicial fact-finding to score Michigan's guidelines falls within the "'wide discretion'" accorded a sentencing judge "'in the sources and types of evidence used to assist [the judge] in determining the kind and extent of punishment to be imposed within limits fixed by law.'" *Alleyne*, 570 US ___, ___ n 6; 133 S Ct at 2163 n 6, quoting *Williams v New York*, 337 US 241, 246; 69 S Ct 1079; 93 L Ed 1337 (1949). Michigan's sentencing guidelines are within the "broad sentencing discretion, informed by judicial factfinding, [which] does not violate the Sixth Amendment." *Alleyne*, 570 US at ___; 133 S Ct at 2163.

VI. STANDARD 4 BRIEF

In his Standard 4 brief, defendant argues that the lower court and the prosecutor committed a litany of errors and that these errors warrant a new trial. At the outset, we note that some of defendant's arguments mirror arguments raised by appellate counsel. Those redundancies will not be addressed below.

A. PROSECUTORIAL MISCONDUCT

Defendant argues that his right to a fair trial was undermined by multiple acts of misconduct by the prosecutor. Defendant concedes that this issue is unpreserved for appellate review. Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting his substantial rights. *People v Abraham*, 256 Mich App 265, 274-275; 662 NW2d 836 (2003). "The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial (i.e., whether prejudice resulted). Prosecutorial-misconduct issues are decided case by case, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context." *Id*. at 272-273 (internal quotation marks and citations omitted).

Defendant argues that the court erred by admitting evidence of the substance analysis performed by the Michigan State Police on the cocaine that was recovered from him on the night

of his arrest. Defendant insinuates that the prosecutor acted in bad faith in disturbing the chain of custody and preventing defendant from independently analyzing the evidence in violation of a court order. Plaintiff explained below that the substance was unable to be independently analyzed because it was destroyed during the initial analysis.

Defendant's argument is meritless. Evidence need not have a perfect chain of custody in order to be admissible; deficiencies "in the chain of custody [go] to the weight of the evidence rather than its admissibility once the proffered evidence is shown to a reasonable degree of certainty to be what its proponent claims." *People v White*, 208 Mich App 126, 130-131; 527 NW2d 34 (1994). And prosecutorial misconduct may not arise from a prosecutor's good-faith attempt to admit evidence at trial. *Abraham*, 256 Mich App at 278. The court found that the police and the prosecution acted in good faith and that there had been no malicious attempt to deprive defendant of his right to challenge the evidence. Defendant has not identified any egregious or intentional conduct by the prosecution that would render the court's finding clearly erroneous. Nor has he identified any significant breaks in the chain of custody that would render the evidence inadmissible. Moreover, the court instructed the jury that it could draw a negative inference against plaintiff because of the violation of the court order.

Defendant also argues that the prosecution engaged in prejudicial misconduct by selectively prosecuting defendant while simultaneously refusing to prosecute another person involved in the incident in issue. The decision to prosecute a person generally lies in the sound discretion of the prosecutor. See *People v Monroe*, 127 Mich App 817, 819-820; 339 NW2d 260 (1983). Selective prosecution may only violate a person's constitutional rights when the decision to prosecute is predicated on clear and intentional discrimination of "an unjustifiable standard such as race, religion or other arbitrary classification." *Id*. at 819. Defendant has not identified any such discrimination in plaintiff's decision to prosecute defendant that would warrant a finding of prosecutorial misconduct.

Defendant further argues that the prosecutor prejudicially and excessively referred to defendant's criminal record during these proceedings, such that he was convicted solely based on his prior record. As noted earlier, our Legislature determined that evidence of a person's prior sexual offenses against minors should be admissible in subsequent proceedings involving similar conduct, as these prior offenses are highly probative. See MCL 768.27a. Thus, the prosecutor's repeated reference to this evidence cannot form a basis for prosecutorial misconduct. Moreover, defendant was not convicted solely on his prior record. The current sexual assault allegations against defendant were supported by the victim's clear testimony, which was corroborated by the testimony of his brother.

Defendant contends that plaintiff inappropriately attacked his credibility and that of his witnesses during cross-examination and closing arguments. Commenting on witness credibility is only inappropriate when it implies that the police, judge, or prosecutor has special knowledge of the case. *People v Thomas*, 260 Mich App 450, 453-455; 678 NW2d 631 (2004). None of the prosecutor's statements implied such special knowledge. Moreover, attacking the credibility of defendant and his witnesses was appropriate given that, at its essence, this case called on the jury to consider and weigh witness credibility. Similarly, bolstering one's own witnesses during closing arguments is entirely appropriate "when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Id*. at 455.

Regarding asking one of defendant's witnesses about the witness's brother, the court struck plaintiff's inquiry and directed the jury to disregard the questioning. As for the prosecutor's reference to "Mr. Felon," it is clear that it was simply a slip of the tongue, as the prosecutor immediately corrected the mistake. Finally, the court instructed the jury that the parties' arguments and questions were not evidence and that the jury is the sole party required to find the facts. Because jurors are presumed to follow instructions, the court cured any prejudice possibly resulting. *Abraham*, 256 Mich App at 279.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next claims that he should receive a new trial because his trial counsel provided constitutionally defective legal representation. A claim of ineffective assistance of counsel is preserved by timely moving for a new trial, or by moving for a *Ginther* hearing.[2] *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). Defendant did not do so. We treat the issue as unpreserved for appellate review. "Where claims of ineffective assistance of counsel have not been preserved, our review is limited to errors apparent on the record." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

Although defendant is guaranteed the right to counsel under both the US Constitution, US Const, Am VI, and Michigan Constitution, Const 1963, art 1, § 20, defendant bears a high burden in proving that his trial counsel was so deficient as to functionally deprive defendant of his Sixth Amendment right to effective counsel. *People v Meissner*, 294 Mich App 438, 458-459; 812 NW2d 37 (2011). The United States Supreme Court has set forth a two-prong test to determine whether counsel was ineffective in a given case. First, defendant must prove that his trial counsel failed to meet an objective standard of reasonableness based on "prevailing professional norms." *Strickland v Washington*, 466 US 668, 688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See also *People v Armstrong*, 490 Mich 281, 290; 806 NW2d 676 (2011). Second, defendant must establish prejudice, which is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 US at 694. See also *Armstrong*, 490 Mich at 290. The crux of this test is to determine whether the mistakes by defendant's counsel effectively deprived defendant of the right to a fair trial. *Meissner*, 294 Mich App at 459.

Defendant first argues that his trial counsel was unprepared at trial, had a conflict of interest due to her vacation, and forced him to give up his right to a speedy trial in order to ensure that his attorney was prepared. Defendant's counsel was appointed as replacement counsel on July 11, 2012, and the court adjourned the original trial date of July 18 through July 20, 2012 to allow his counsel to prepare for trial. Although she asserted that defendant was unwilling to waive his right to a speedy trial, defendant's counsel also moved for a temporary adjournment in order to prepare for trial. During the status conference on August 20, 2012, counsel asked the court to release defendant or reduce his bail because the 180-day speedy trial period would expire before the new trial date in September 2012. The court decided to adjourn

[2] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

the trial 60 days because there was good cause for the adjournment, as defendant's counsel needed time to prepare for trial.

Although defendant makes several disparaging comments about his counsel, he identifies no specific conduct by his counsel that demonstrated her lack of preparedness at trial. Defendant's counsel acknowledged during the status conference that she was appointed shortly before the adjournment, but in context this statement was made to explain why she did not have the opportunity to discuss plea offers with plaintiff. This statement was not made in order to request an additional adjournment from the court. Although defendant contends that his counsel's motion to adjourn the case in July resulted in him waiving his speedy trial right, this is incorrect. Defendant's right to a speedy trial remained intact; the motion of his counsel merely excluded the 60-day adjournment from calculating the 180-day speedy trial requirement. MCR 6.004(C)(3). He would still have been able to argue a speedy trial violation if the court continued his detention beyond the 180-day limit after the 60-day adjournment had expired. Defendant's counsel had good reason to do so, as she had inadequate time to prepare for trial at the previously scheduled trial date. Had she not moved for an adjournment, defendant's counsel would have provided ineffective assistance of counsel and violated her ethical duties to defendant.

Defendant next contends that his counsel was ineffective by failing to call his mother as a witness at trial. However, "[d]ecisions regarding what evidence to present, whether to call witnesses, and how to question witnesses are presumed to be matters of trial strategy." *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008). Defendant does not identify any crucial exonerating evidence that his mother would have offered. Thus, his counsel could have had any number of sound reasons for not calling defendant's mother as a witness, and her decision did not violate any prevailing professional norm.

Defendant also argues that his counsel was ineffective for failing to excuse a juror who was a reserve police officer. He contends that the juror was biased in favor of the prosecution. Police officers are not presumed to be biased in favor of prosecutors. Further, the juror assured the parties and the court that he would be objective and would follow the law. The decision to allow the juror to serve was objectively reasonable.

Defendant argues that his counsel was ineffective for failing to raise several objections during the trial, including the following: (1) plaintiff's repeated reference to defendant's prior CSC II convictions; (2) the court's practice of allowing jurors to question witnesses; and (3) the presence of some of plaintiff's witnesses in the courtroom during plaintiff's case-in-chief.[3] As noted above, plaintiff was permitted to reference defendant's prior CSC II convictions, and the court was permitted to allow jurors to question witnesses. Counsel cannot be deemed ineffective for failing to raise a meritless objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903

[3] Defendant also claims that his counsel was ineffective for failing to object to the court's reliance on the 5-year sentence enhancement statute when it sentenced defendant. But because the court erred in making that decision, counsel's assistance on the matter need not be considered.

(1998). And defendant presents no legal authority obligating the court to sequester all witnesses during a trial. In fact, the "exclusion of witnesses from the courtroom is within the discretion of the trial judge." See *People v Stanley*, 71 Mich App 56, 62; 246 NW2d 418 (1976).

C. EXERCISE OF DISCRETION

Defendant also argues that he is entitled to a new trial because the court abused its discretion by: (1) setting unreasonably high bail, which effectively required his ongoing detention without any possibility of release; (2) taking a temporary break at the beginning of the trial in order to hear a different case; and (3) adjourning the trial from July to September 2012, in violation of defendant's right to a speedy trial. Defendant preserved his demand for bail modification and his right to a speedy trial during the motion hearing to adjourn the trial and the status conference. But he did not object to the court's temporary break during the trial, so the issue is unpreserved. Preserved challenges to discretionary decisions are reviewed for an abuse of discretion, *Malone*, 287 Mich App at 661, while unpreserved challenges are reviewed for plain error affecting substantial rights, *Carines*, 460 Mich at 761-764.

"Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments." MCL 600.611. "A circuit court's inherent power is not governed so much by rule or statute, but by the control necessarily vested in courts [by our Constitution] to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *In re Parole of Hill*, 298 Mich App 404, 427-428; 827 NW2d 407 (2012). Courts have the inherent power "to control the movement of cases on its docket" through a variety of means. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639-640; 607 NW2d 100 (1999). Because the court had the authority to efficiently manage its docket by calling another case during a brief break in defendant's trial, the court's decision was not an abuse of discretion.

Defendant contends that the court abused its discretion by violating his speedy trial rights when it adjourned the trial from July to September. MCR 6.004 governs defendant's right to a speedy trial. After 180 days of detention, a defendant charged with a felony must be released on a personal recognizance bond unless the court finds, by clear and convincing evidence, that defendant will not appear for trial or presents "a danger to any other person or the community." MCR 6.004(C). Notably, the 180-day requirement excludes any periods that result from an "adjournment requested or consented to by the defendant's lawyer," as well as "any other periods of delay that in the court's judgment are justified by good cause." MCR 6.004(C)(3), (C)(6).

The court's adjournment decision did not violate defendant's right to a speedy trial. First, defendant's counsel wisely requested the adjournment of the case so that she could provide competent representation to defendant, as she had inadequate time to prepare for the case before trial. Counsel needing to properly prepare for trial qualifies as good cause to adjourn. Second, the court reviewed and considered the fact that defendant had multiple prior convictions for CSC against minors, was currently charged with CSC against a minor, and was charged with assaulting the victim's brother in order to facilitate his sexual perpetration on the victim. Thus, the court had clear and convincing evidence to find that defendant posed a threat to the community.

Defendant finally contends that the court abused its discretion in refusing to modify his bond conditions. The court set bail at $100,000, and the court later refused to lower it before trial. MCR 6.106(F)(2) require courts to state its reasons for making its determination on bond conditions when it requires money bail. Courts are allowed to institute money bail as a bond condition when it finds that "the defendant's appearance or the protection of the public cannot otherwise be assured" without money bail. MCR 6.106(E). As addressed above, the court reasonably found that defendant presented an ongoing threat to the community and stated those reasons on the record. Accordingly, the court did not abuse its discretion in denying defendant's request to modify his bond conditions and reduce his bail.

Affirmed in part, vacated in part and remanded for additional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck